

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

STEVEN RINGELBERG,

Plaintiff,

Case No. 2:17-cv-01788-JAD-PAL

ORDER

(Mot Prot Ord – ECF No. 57)
(Counter Mot Prot Ord – ECF No. 63)

VANGUARD INTEGRITY
PROFESSIONALS-NEVADA, INC., et al.

Defendants.

12 Before the court are plaintiff's Motion for Protective Order (ECF No. 57), and defendants'
13 Opposition and Countermotion for Entry of Protective Order (ECF No. 63). The court held a
14 hearing on a series of motions in this case on November 7, 2017, and took the current motions
15 under advisement indicating that the court would review the parties' competing proposed forms of
16 protective order and enter a protective order. The parties requested, and received, a referral to the
17 court's ENE program. An ENE was conducted before The Honorable George W. Foley on
18 December 20, 2017, but the parties were unable to reach a settlement, and this case was returned
19 to the normal litigation track. *See* Minutes of Proceedings (ECF No. 79). This order resolves the
20 parties' disputes about disputed terms of a protective order governing confidentiality.

21 The parties agree that a protective order governing confidentiality for documents disclosed
22 in discovery should be entered. The parties met and conferred and exchanged draft proposed
23 stipulated protective orders, and were able to agree on the majority of its terms. However, the
24 parties reached an impasse with respect to the definition of “confidential information” for purposes
25 of designating documents as confidential in discovery. The parties also disagree about whether
26 *intentional* disclosure of attorney-client or qualified work-product documents in discovery
27 operates as a waiver of privilege.

With respect to the definition of “confidential information,” plaintiff proposes a definition that purportedly sets forth an objective description which allows the parties and, if necessary, the court, to determine whether a particular document is entitled to designation as confidential in the event of a dispute. Defendants propose a broader and less restrictive definition of confidential information and also want the ability to designate some documents “highly confidential--attorney client privileged information.” Defendants’ proposed definition contains a clause that documents may be designated as confidential by a producing party or non-party who reasonably and in good faith contends the information should be protected from disclosure pursuant to the protective order. Plaintiff opposes defendants’ definition arguing the open ended “reasonably and in good faith” standard is subjective rather than objective. During oral argument, counsel for plaintiff argued that plaintiff’s definition of confidential is consistent with defendants’ internal policies concerning confidentiality, and would prevent the defendants from over-designating documents as confidential.

The court will resolve the parties’ dispute by defining “confidential information” as information, regardless of how generated, stored, or maintained, or tangible things that qualify for protection under Fed. R. Civ. P. 26(c).

Plaintiff’s version of the proposed protective order provides that “the intentional production of privileged materials should constitute a waiver of the privilege.” Defendants’ version of this section of the draft proposed protective order provides that intentional production of privileged information will not constitute a waiver of the privilege. Plaintiff argues that defendants’ proposal that production of privileged documents does not constitute a waiver is contrary to established law, the Federal Rules of Civil Procedure, and a term of the stipulated Discovery Plan and Scheduling Order (ECF No. 48) which the court entered. Additionally, plaintiff requests a 15-day claw back period after discovery of inadvertently produced documents.

Defendants respond that plaintiff’s proposed form of protective order fails to protect defendants against disclosure of privileged information that may be necessary for use at trial, and does not contain a sufficient “claw back” clause for inadvertent disclosure of attorney-client communications. Defendants object to a 15-day claw back period after discovery of an inadvertent

1 production of privileged materials and propose alternative language requiring claw back “as soon
2 as practicable” following discovery of the inadvertent production.

3 Defendants maintain that there is good cause to enter a protective order permitting
4 defendants “to assert documents necessary to pursue their available defenses and have the ability
5 to claw back those that are inadvertently produced without losing their protected status.”
6 Defendants also maintain that because plaintiff acted as in-house counsel for the defendants, and
7 a substantial amount of relevant information involved in this case is privileged, and some of the
8 privileged information supports defendants’ defenses, “it is essential that Defendants be permitted
9 to present its defenses without putting any privileges in jeopardy or forever being lost.”
10 Defendants reason that they will be required to rely upon privileged documents in this case and
11 “should not be compelled to waive any claims of privilege just because such privileged documents
12 support Defendants’ defenses in the litigation.” During oral argument counsel for plaintiff
13 disputed that the parties would likely be required to rely on a number of privileged documents to
14 assert their claims and defenses.

15 Defendants acknowledge that this case is in federal court on federal question jurisdiction,
16 and therefore federal law of privilege applies. However, they argue applicable law permits the
17 court to look to state privilege law. In this case, defendants contend the court should primarily
18 look to federal common law, but may also rely on state law, particularly in Nevada and California.
19 Nevada Revised Statute (“NRS”) § 49.095 is Nevada’s attorney-client privilege statute. There are
20 exceptions to the privilege codified at NRS 49.115, but defendants concede no statutory exception
21 applies to the facts in this case. Defendants reason that intentional disclosure of privileged
22 materials should not constitute a waiver because an attorney is not permitted to waive the attorney-
23 client privilege on behalf of the client. Rather, the privilege belongs to the corporation because
24 the corporation is the client. In this case, the defendants are the holders of the attorney-client
25 privilege and may need to rely upon privileged materials in their defense of plaintiff’s claims.
26 Defendants maintain that they should not be placed in the position of having to choose between
27 presentation of their best defense and preserving a privilege. They should be able to do both, to
28 set forth their best case while preserving their privilege.

Having reviewed and considered the moving and responsive papers and the arguments of counsel, the court will enter a protective order in the form below resolving the parties' disputes. This protective order is entered to facilitate the parties' discovery exchanges. In entering this protective order, the parties have not shown, and this court has not found, that any specific documents are entitled to confidential treatment in this case. The parties have not provided specific facts supported by affidavits or concrete examples to establish that a protective order is required to protect any specific trade secret or other confidential information under Rule 26(c) of the Federal Rules of Civil Procedure or that disclosure would cause an identifiable and significant harm. Additionally, entry of this protective order does not constitute a finding of good cause, in and of itself, for filing documents produced in discovery under seal in motions or applications filed with the court.

The Ninth Circuit has held that parties seeking to maintain the confidentiality of documents attached to most non-dispositive motions must show good cause exists to overcome the presumption of public access. *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006); but see *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092 (9th Cir. 2016) (standards courts apply to sealing requests turn on the relevance of the documents to the substantive merits of a case—not the relief sought). Parties seeking to maintain the secrecy of documents attached to dispositive motions must show compelling reasons sufficient to overcome the presumption of public access. *Id.* If a sealing order is permitted, it must be narrowly tailored. *Press-Enterprise Co. v. Superior Ct. of California*, 464 U.S. 501, 512 (1984). Sealing entire documents is improper when any confidential information can be redacted while leaving meaningful information available to the public. *In re Roman Catholic Archbishop of Portland*, 661 F.3d 417, 425 (9th Cir. 2011).

To comply with *Kamakana*, the party who *designates* documents as confidential must submit a memorandum of points and authorities to the court presenting articulable facts that identify the interests in favor of the documents' continued secrecy and showing that these specific interests outweigh the public's strong interest in transparency. If an opposing party files a motion to seal certain documents based on the parties' protective order, the *designating party* is required to file within 14 days an appropriate memorandum of points and authorities making a

1 particularized showing why the documents should remain under seal or why the designating party
2 should be allowed to file a redacted version. If the designating party fails to timely comply with
3 this order, the motion to seal will be denied and the Clerk of the Court will be directed to unseal
4 the documents to make them available on the public docket.

5 In addition to *Kamakana*, the parties are required to follow the proper CM/ECF procedures
6 for any requests to seal judicial records. The Local Rules of Practice provide that the electronic
7 record is the court's official record and require the Clerk of the Court to maintain the official files
8 in all cases in electronic form. *See LR IC 1-1.* Pursuant to LR IA 10-5, attorneys must file
9 documents under seal using the court's electronic filing procedures:

10 Unless otherwise permitted by statute, rule, or prior court order, papers filed with
11 the court under seal must be accompanied by a motion for leave to file those
12 documents under seal. If papers are filed under seal under prior court order, the
13 papers must state on the first page, directly under the case number: "FILED
UNDER SEAL UNDER COURT ORDER (ECF No.). All papers filed under seal
will remain sealed until the court either denies the motion to seal or enters an order
unsealing them.

14 *See LR IA 10-5(a).*

15 Turning to the parties' dispute concerning privilege waiver for intentionally produced
16 documents, the court notes the parties' stipulated Discovery Plan and Scheduling Order (ECF No.
17 48) stipulated to provisions governing claims of privilege and attorney work product. In it, the
18 parties stipulated that a party unintentionally producing a document protected from disclosure by
19 the attorney-client privilege, attorney work-product doctrine, or other recognized privilege would
20 amend its discovery response and notify the other party that a document was inadvertently
21 produced and should have been withheld within 15 days of discovering its inadvertent disclosure.
22 The parties also stipulated that within 72 hours of receiving notice of an inadvertent production,
23 the requesting party must promptly return the documents and any copies, preserving its right to
24 challenge the assertion of privilege with the court. Defendants' proposed form of protective order
25 would alter the terms of the prior stipulation. Having previously stipulated to these provisions, the
26 court will enforce the parties' stipulation and order regarding inadvertently produced documents
27 and the timeframe for notifying opposing counsel that a privileged document was inadvertently
28 produced as well as the timeframe for returning inadvertently produced documents.

With respect to defendants' request that the court enter an order providing that the intentional production of privileged documents shall not constitute a waiver, the court categorically rejects defendants' non-waiver arguments. As the Advisory Committee Notes to Rule 502(a) make clear, “[t]his subdivision does not alter the substantive law regarding when a party's strategic use in litigation of otherwise privileged information obliges that party to waive privilege regarding other information on the same subject matter, so that the information being used can be fairly considered in context.” *See*, Addendum to Advisory Committee Notes, Statement of Congressional Intent Regarding Rule 502 of the Federal Rules of Evidence.

A party may not intentionally put privilege or protected information into litigation in a selective, misleading, or unfair manner. Advisory Committee Notes to Rule 502(a) revised, 11/28/07. Fed. R. Evid. 502(b) was enacted to overcome the holdings of some courts that inadvertent disclosure of protected information results in subject matter waiver of all documents on the same subject matter. *Id.* Rule 502(b) became effective in 2007 and took the middle ground among conflicting approaches taken by the courts regarding the legal effect of inadvertent disclosure of protected communications or information in federal proceedings. *Id.* Rule 502(b) now provides that inadvertent production of privileged or protected materials does not constitute a waiver if the holder of the privilege or qualified protection took reasonable steps to prevent disclosure and also took reasonable steps to rectify the error. *Id.*

Rule 502(d) was enacted to address the rising costs of pre-production privilege review, especially in complex cases involving large amounts of electronically stored information. *Id.* 502(d) was designed to enable a court to enter an order “that will allow the parties to conduct and respond to discovery expeditiously, without the need for exhaustive pre-production privilege reviews, while still preserving each party's right to assert the privilege to preclude use in litigation of information disclosed in such discovery.” *See* Addendum to Advisory Committee Notes, Statement of Congressional Intent Regarding Rule 502 of the Federal Rules of Evidence. The Rule “does not alter the law regarding waiver of privilege resulting from having acquiesced in the use of otherwise privileged information. ... and “does not provide a basis for the court to enable the parties to agree to a selective waiver of the privilege...” *Id.*

1 Rule 502(e) enables the parties to agree among themselves concerning the effect of
2 disclosures between each other in a federal proceeding. However, the parties' agreement regarding
3 their own disclosures is not binding on non-parties unless it is incorporated in a court order. ("This
4 subdivision does not confer any authority on a court to enter any order regarding the effect of
5 disclosures. That authority must be found in subdivision (d), or elsewhere.") *Id.*

6 In short, Fed. R. Evid. 502 does not authorize the relief defendants request in its proposed
7 form of protective order.

8 Controlling Ninth Circuit case law also does not support the relief defendants request. The
9 attorney-client privilege is one of the oldest of the common law privileges. *Upjohn v. United*
10 *States*, 449 U.S. 383 (1981). Its purpose is "to encourage full and frank communication between
11 attorneys and their clients and thereby promote broader public interest in the observance of law
12 and administration of justice." *Id.* The Ninth Circuit has adopted Dean Whitmore's articulation
13 of the essential elements of the attorney-client privilege:

- 14 (1) Where legal advice of any kind is sought,
- 15 (2) from a professional legal advisor in his capacity as such,
- 16 (3) the communications relating to that purpose,
- 17 (4) made in confidence
- 18 (5) by the client,
- 19 (6) are at this instance permanently protected
- 20 (7) from disclosure by himself or by the legal advisor,
- 21 (8) unless the protection is waived.

22 *In re: Fishel*, 557 F.2d 209 (9th Cir. 1997).

23 The burden is on the party asserting the privilege to establish all of the elements of the
24 privilege. *United States v. Martin*, 378 F.3d 988, 999-1000 (9th Cir. 2000). "Because it impedes
25 full and free discovery of the truth, the attorney-client privilege is strictly construed." *Weil v.*
26 *Investment/Indicators, Research and Management, Inc.*, 647 F.2d 18, 24 (9th Cir. 1980). One of
27 the elements the party claiming the privilege must prove is that it has not waived the privilege.

This case is governed by federal common law principles. The Ninth Circuit has plainly held that a party may not selectively waive the attorney-client privilege. It has held that voluntary disclosure to one waives the attorney-client privilege as to the world at large. *In re: Pacific Picture Corp.*, 679 F.3d 1121, 1127 (9th Cir. 2012). There, the Ninth Circuit declined to adopt the selective waiver theory finding that, if it was “to unmoor a privilege from its underlying justification” it would be failing to construe the privilege narrowly.” *Id.* at 1128.

The work product doctrine is a “qualified privilege” that protects “certain materials prepared by an attorney acting for his client in anticipation of litigation.” *United States v. Nobles*, 422 U.S. 225, 237-38 (1975) (internal quotation marks omitted) (“At its core the work-product doctrine shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client’s case.”). The work product doctrine is codified in Fed. R. Civ. P. 26(b)(3) and protects “from discovery documents and tangible things prepared by a party or his representative in anticipation of litigation.” *In re: Grand Jury Subpoena*, 357 F.3d 900, 906, citing *Admiral Insurance Co. v. United States District Court*, 881 F.2d 1486, 1494 (9th Cir. 1989). An adverse party may obtain documents protected by the work product privilege only upon a showing of substantial need and undue hardship in obtaining the substantial equivalent of the materials by other means. Fed. R. Civ. P. 26(b)(3). The qualified work product privilege is waived by voluntary disclosure.

The court enters the following protective order governing confidentiality of documents disclosed in discovery using the parties' agreed upon terms, and resolving the parties' disputes as set forth above.

PROTECTIVE ORDER

I. DEFINITIONS

The following definitions shall apply to this Protective Order:

A. The “Action” shall refer to in the instant litigation originally filed in the United States District Court for the District of Columbia, and transferred to the United States District Court for the District of Nevada, Case No. 2:17-cv-01788-JAD-PAL, and any appeal

1 thereof through final determination. The “Action” does not refer to any “related case”
2 unless ordered by this Court.

- 3 B. “Producing Party” shall mean any person or entity producing documents, information
4 or other materials in the Action, including any Party to the Action, or any third parties.
5 C. “Party” or “Parties” shall mean the Plaintiff and Defendants in this Action, and any
6 other person that may become a named Party to the Action.
7 D. “Confidential” information or items means information, regardless of how generated,
8 stored, or maintained, or tangible things that qualify for protection under Fed. R. Civ.
9 P. 26(c).
10 E. “Legend” as used herein shall mean a stamp or similar insignia stating
11 “CONFIDENTIAL”.
12 F. When reference is made in this Protective Order to any document or Party, the singular
13 shall include the plural, and plural shall include the singular.

14 **II. DESIGNATION OF INFORMATION AND DOCUMENTS**

- 15 A. When any document or thing produced under this Protective Order is designated as
16 “CONFIDENTIAL” a Legend shall be affixed to the first page and all pages containing
17 information for which the Producing Party seeks protection. When information
18 produced in answer to an Interrogatory, or response to a Request for Production or
19 Request for Admission is designated as CONFIDENTIAL, the response or answer shall
20 be preceded with the appropriate designation.
21 B. A Producing Party may designate documents, information or material as
22 “CONFIDENTIAL” only upon a good faith belief that the documents, information, or
23 material contains material that is Confidential as defined in Section I., D. above.
24 C. The initial failure to designate information or documents as CONFIDENTIAL in
25 accordance with this Protective Order shall not preclude the Producing Party from, at
26 a later date, designating any information or documents as CONFIDENTIAL. The
27 Producing Party may, by written notice to counsel of record for the receiving Party,
28 designate previously produced information or documents as CONFIDENTIAL, which

1 it had inadvertently failed to designate. Upon receipt of such notice, the receiving Party
2 shall promptly mark its copies of the information or documents so designated, and shall,
3 thereafter, treat the information and documents as if it has been designated
4 CONFIDENTIAL and shall restrict the disclosure or use of the information or
5 documents in accordance with this Protective Order. If the information or documents
6 have previously been disclosed to non-parties, the Parties shall take reasonable steps to
7 obtain all such previously disclosed information or documents and advise the non-
8 parties to treat the designated materials in a manner that is consistent with this
9 Protective Order and as though the information and documents were originally so
10 designated.

11 **III. LIMITATIONS**

- 12 A. This Protective Order shall govern documents, testimony, information and materials
13 generated or produced in response to any method of discovery conducted by any Party
14 to the Action, and used in the prosecution and defense of the Action.
- 15 B. Persons obtaining access to CONFIDENTIAL information under this Protective Order
16 shall use the information only for the preparation of and the trial in the Action. Persons
17 shall not use such information for any other purpose, including business, commercial,
18 personal, administrative or judicial proceedings.
- 19 C. Nothing in this Protective Order shall restrict in any way the use or disclosure by a
20 Party of information (a) that is or has become publicly known through no fault of the
21 receiving Party; (b) that is lawfully acquired by or known to the receiving Party
22 independent of the Producing Party; or (c) prior to entry of this Protective Order was
23 previously produced, disclosed, and/or provided by the Producing Party or a non-party
24 without an obligation of confidentiality and not by inadvertence or mistake.

25 **IV. PERMISSIBLE DISCLOSURES/ACCESS**

26 Except as set forth herein, Confidential information, and any facts or information contained
27 therein or derived therefrom, shall be disclosed only to the Court and/or to: (a) the Parties in the
28 Action, including their officers, directors and employees, but only to the extent that such disclosure

1 is necessary for the conduct of litigation in the Action; (b) Outside Counsel for the Parties hereto
2 and their agents, employees, paralegals, or other secretarial and clerical employees; (c) experts,
3 independent contractors, consultants, or advisors who are employed or retained by, or on behalf
4 of, one or more of the Parties to the Action or their Outside Counsel to assist in preparation of the
5 Action for trial; (d) deponents and their counsel who have a need to review this material during
6 the course of, or in connection with, depositions taken in or for the Action; (e) stenographic
7 reporters who are involved in depositions, the trial or any hearings or proceedings before the Court
8 in the Action; (f) people who have previously received or created the document; and (g) witnesses
9 in the Action who need to review this material in connection with their testimony in the Action.
10 Confidential information may be disclosed to persons listed in this paragraph only after such
11 person has been shown a copy of this Protective Order and agrees to be bound by the terms of this
12 Protective Order in the form attached hereto as **Exhibit A**.

13 **V. DECLASSIFICATION**

14 Unless otherwise ordered by the Court, or otherwise agreed by the Parties, all documents
15 and other discovery materials designated “CONFIDENTIAL” in accordance with Section I., D
16 above, shall be treated as such under this Protective Order. In the event that any Party objects to
17 the designation of any document, the objecting Party may seek modification of the designation or
18 the disclosure of the redacted information in accordance with the following procedure:

19 At any time, the receiving Party of any document or information designated
20 CONFIDENTIAL may notify the Producing Party, in writing, that the receiving Party does not
21 concur in the designation or redaction. The Parties shall attempt to resolve such challenges
22 informally. In the event that such attempts are unable to resolve their disputes in the meet-and-
23 confer process, either party may file an appropriate motion with the court challenging or defending
24 the designation of the document as CONFIDENTIAL. The burden is on the party designating the
25 document as CONFIDENTIAL to support its claim of confidentiality. The parties shall treat the
26 documents as CONFIDENTIAL until the Court rules otherwise.

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1 **VI. DESIGNATED INFORMATION AND DOCUMENTS IN DEPOSITIONS**

- 2 A. In the case where Confidential information or documents are used or revealed during a
3 deposition or if a deponent is asked about or shown documents that have been
4 designated as CONFIDENTIAL, under this Protective Order, designation of the
5 transcript or any portion thereof, including the designated documents or other exhibits,
6 as "CONFIDENTIAL" may be made by a statement by a Party, counsel or the witness
7 on the record either during or after conclusion of the deposition. The stenographer
8 transcribing the deposition shall be instructed to affix a Legend to the cover page and
9 all appropriate pages of the transcript, "This transcript portion contains information
10 subject to a Protective Order and shall be used only in accordance therewith."
- 11 B. A Party or a witness may designate a deposition or trial transcript, or a portion thereof,
12 disclosing, containing or referring to any Confidential information or documents as
13 "CONFIDENTIAL" by informing counsel for all other Parties to this Action in writing
14 within thirty (30) days after receipt of the transcript as to the specific pages and lines
15 deemed Confidential, and thereafter such pages and lines shall constitute Confidential
16 information or documents pursuant to this Protective Order. Upon receipt of such
17 notice, any Party in possession of copies of the transcript with the designated pages and
18 lines shall affix the appropriate Legend thereto. During the 30-day interval following
19 receipt of a transcript, the transcript shall be treated as Confidential.

20 **VII. DESIGNATED INFORMATION AND DOCUMENTS IN BRIEFS**

21 In the event that any Confidential document or information, or information derived
22 therefrom is included with, or the contents thereof are disclosed in any documents filed with the
23 Clerk of this Court or any other court, including, without limitation, any pleadings, motion papers,
24 briefs or deposition transcripts, such documents shall be filed under seal subject to the provisions
25 of LR IA 10-5 until further order of the Court. The filing party shall be responsible for informing
26 the Clerk of the Court that the filing should be sealed and for placing the legend, pursuant to LR
27 IA 10-5, "FILED UNDER SEAL PURSUANT TO THE PROTECTIVE ORDER DATED ____"
28 above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform

1 to the labeling requirements set forth in this Protective Order. The Party who has designated such
2 materials as Confidential information shall, within 14 days after the filing of the document under
3 seal, submit a motion to the Court making the showing required under *Kamakana v. City and*
4 *County of Honolulu*, 447 F.3d 172 (9th Cir. 2006) and *Center for Auto Safety v. Chrysler Group,*
5 *LLC*, 809 F.3d 1092 (9th Cir. 2016) to sustain the sealed status of such materials. When filings
6 are made under seal, the parties agree to file through the Court's Electronic Case Filing Procedures
7 redacted versions of such filings with any Protected Material removed. In complying with this
8 requirement, the parties shall exercise good faith in redacting Confidential information of other
9 parties.

10 **VIII. DESIGNATED INFORMATION AND DOCUMENTS IN THE RECORD OF**
11 **THE ACTION**

12 Confidential information or documents may be offered in evidence at any hearing or the
13 trial in the Action, provided that the Parties have met, conferred and agreed in advance of the
14 hearing and/or trial as to how the information or documents will be used, including, by way of
15 example, requesting that the Court designate that portion of the transcript containing the Parties'
16 discussion of the Confidential information or documents as Confidential and maintain it under
17 seal, only to be produced to the Parties at their request. If the Parties cannot agree about how the
18 information or documents will be used during a hearing, before or at the time of the hearing, the
19 Party designating such Confidential status may move the Court for an order that the evidence be
20 received *in camera* or under other conditions to prevent unnecessary disclosure. If such a motion
21 is made regarding evidence to be introduced at the time of trial, then the Party designating such
22 Confidential status shall notify opposing counsel and the Court of its intent to make the motion
23 sufficiently in advance of and outside the presence of the jury so that counsel has the opportunity
24 to object to the evidence and/or an opportunity to seek appropriate protection from the Court
25 outside the presence of the jury and before the information or documents are offered into evidence
26 in open court. The Court will then determine whether the proffered evidence should continue to
27 be treated as Confidential and, if so, what protection, if any, may be afforded to such information
28 at the hearing.

1 **IX. SUBPOENA BY COURT OR OTHER AGENCIES**

2 If at any time any document or information protected by this Protective Order is
3 subpoenaed by any court, administrative or legislative body, or is requested by any other person
4 or entity purporting to have authority to require the production of such information, the Party to
5 whom the subpoena or other request is directed shall immediately give written notice to any Party
6 which has designated such information Confidential. The Party that received the subpoena shall
7 object to production under Rule 45 of the Federal Rules of Civil Procedure, or any similar rule
8 protecting the production of Confidential documents in that proceeding. After receipt of the notice
9 specified under this paragraph, the designating Party shall be responsible for obtaining any order
10 it believes necessary to prevent disclosure of documents designated, and the Party to whom the
11 referenced subpoena or other request is directed shall produce such document or information only
12 upon an order issued by a judge of a court of competent jurisdiction requiring such production.

13 **X. CLIENT CONSULTATION**

14 Nothing in this Protective Order shall prevent or otherwise restrict counsel from rendering
15 advice to their clients and, in the course thereof, relying generally on examination of stamped
16 Confidential information or documents; provided, however, that in rendering such advice and
17 otherwise communicating with such clients, counsel shall not make specific disclosure of any
18 items so designated except pursuant to the procedures in Paragraph IV above.

19 **XI. COPIES OF DESIGNATED INFORMATION**

20 Outside Counsel are responsible for employing reasonable measures, consistent with this
21 Protective Order, to control duplication of, access to, and distribution of copies of Confidential
22 information. Parties shall not duplicate Confidential information or documents except working
23 copies and for filing in Court under seal. All copies of any Confidential information or documents
24 shall be treated as provided in this Protective Order. Any Party making, or causing to be made,
25 copies of any such documents shall make certain that each such copy bears the appropriate Legend
26 pursuant to the requirements of this Protective Order.

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1 **XII. ADDITIONAL RESTRICTIONS FOR CONFIDENTIAL INFORMATION**
2 **DESIGNATED “CONFIDENTIAL”**

- 3 A. If a Producing Party wishes to waive or otherwise reduce the restrictions set forth on
4 the production of Confidential information designated “CONFIDENTIAL,” it may do
5 so by agreement in writing with the Receiving Party.
- 6 B. A Receiving Party may include excerpts of the Confidential Information designated
7 “CONFIDENTIAL” in a pleading, exhibit, expert report, discovery document,
8 deposition transcript, or other Court document (hereinafter “Court Document” or
9 “Court Documents”), provided that the Court Documents are appropriately marked
10 under this Protective Order, restricted to those who are entitled to have access to them
11 as specified herein, and, if filed with the Court, filed under seal in accordance with the
12 Court’s rules, procedures and orders.
- 13 C. The Receiving Party may only include excerpts of Confidential information designated
14 “CONFIDENTIAL” that are reasonably necessary for the purposes for which such part
15 of the Confidential information is used in any Court Documents. To the extent portions
16 of the Confidential information designated “CONFIDENTIAL” are quoted in a Court
17 Document, either: (1) the entire Court Document will be stamped and treated as
18 “CONFIDENTIAL” or (2) those pages containing quoted Confidential information
19 will be separately stamped and treated as “CONFIDENTIAL”.

20 **XIII. NO WAIVER**

21 The terms and provisions of this Protective Order shall not be deemed or interpreted to
22 require the disclosure or production by any party hereto of any documents or information otherwise
23 subject to a valid claim of attorney-client, work product, or other privilege or protection against
24 disclosure in discovery.

25 No Confidential information or documents shall lose such status under this Protective
26 Order as the result of the use of such information or documents in any hearing, trial, or other court
27 proceeding in this Action, provided that such use is consistent with the terms of this Protective
28 Order. Counsel to the Parties in the Action shall confer at least five (5) days before any such
hearing, trial, or other court proceeding in order to work out any objections to the use of any

1 Confidential information or documents in such court proceeding and to make such amendments to
2 this Protective Order which the Parties agree are necessary to assure the continued confidentiality
3 of such information.

4 Notwithstanding anything to the contrary contained herein, all objections as to
5 admissibility in evidence of the discovery material subject to this Protective Order are reserved
6 and are not waived by any terms of this Protective Order. The use of Confidential information and
7 documents as evidence at trial shall be subject to this Protective Order unless otherwise agreed to
8 by the Parties or modified by the Court.

9 The inadvertent disclosure of Confidential information and documents shall not, under any
10 circumstances, be deemed a waiver, in whole or in part, of any Party's claims of confidentiality.

11 The inadvertent production of any document or other information during discovery in the
12 Action shall be without prejudice to any claim that such material is privileged, prohibited or
13 protected from disclosure as privileged or work product, and no Party shall be held to have waived
14 any rights by reason of such inadvertent production.

15 **XIV. INADVERTENT PRODUCTION OF PRIVILEGED MATERIALS**

16 A. Inadvertent production of privileged material shall be dealt with in accordance with
17 this court's prior order entered August 24, 2017 (ECF No. 48) and Fed. R. Civ. P.
18 26(b)(5). The inadvertent production of information that is subject to a claim of any
19 privilege or other protection as trial preparation material shall not constitute a waiver
20 of any privilege or protection, provided that — consistent with the provisions of Fed.
21 R. Civ. P. 26(b)(5) — the Producing Party notifies the receiving Party in writing within
22 15 days of the Producing Party's discovery of the inadvertent production.

23 B. Following the Producing Party's written notice of the inadvertent production, the
24 receiving Party shall promptly return, destroy, or delete from its databases all copies of
25 the specified information within 72 hours, and may not rely upon or make use of the
26 inadvertently produced materials and shall make reasonable efforts to retrieve the
27 information if the receiving Party previously provided the information to third parties.

- 1 C. The receiving Party shall not assert a claim or argument in this or any other court or
2 legal proceeding that the Producing Party's act of inadvertently producing the
3 information constituted a waiver of the Producing Party's privilege or other protection
4 over the information.
- 5 D. Until the Court makes a determination of the privileged or protected status of the
6 information, the receiving Party shall not use in any way (including, but not limited to,
7 using the information in depositions or at trial) nor disclose the information to other
8 Parties.

9 **XV. NON-TERMINATION**

- 10 A. The termination of proceedings in the Action shall not relieve the Parties from the
11 obligation of maintaining the confidentiality of all information and documents
12 produced and designated pursuant to this Protective Order, unless the Parties otherwise
13 agree or the Court orders or permits otherwise. Upon the final disposition of the Action,
14 all information and documents, including any summaries or abstracts of materials,
15 however maintained, shall be kept completely confidential. Outside Counsel for either
16 Party may use the Confidential information and documents only for the purpose of
17 defending ethical charges or professional malpractice charges, and may not use
18 Confidential information or documents in any subsequent lawsuit.
- 19 B. Within thirty (30) days of the final conclusion of this litigation, including appeals, if
20 requested in writing by the party designating the documents as Confidential
21 Documents, the party seeking disclosure shall return all Confidential Documents, and
22 any copies, abstracts or summaries thereof, to the disclosing party's attorney of record,
23 or certify in writing to the disclosing party's attorney, that they have been destroyed.
- 24 C. This Court shall have jurisdiction over the parties hereto with respect to any dispute
25 concerning the enforcement or interpretation of this Protective Order and the use of this
26 Protective Order.

27 Having reviewed and considered the moving and responsive papers and for the reasons
28 explained,

1 **IT IS ORDERED** that plaintiff's Motion for Protective Order (ECF No. 57) and
2 defendants' Countermotion for Protective Order (ECF No. 63) are **GRANTED in part** and
3 **DENIED in part** consistent with the provisions of this order.

4 DATED this 24th day of January, 2018.

Peggy A. Seen
PEGGY A. SEEN
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT "A" TO PROTECTIVE ORDER

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**UNDERSTANDING AND AGREEMENT REGARDING
"CONFIDENTIAL" INFORMATION AND DOCUMENTS
EXHIBIT A TO PROTECTIVE ORDER**

I hereby state that I have read and received a copy of the Protective Order Governing the Confidentiality of Information and Documents (the "Order") in *Steven Ringelberg v. Vanguard Integrity Professionals – Nevada, Inc., Vanguard Integrity Professionals, Inc.*, Case No. 2:17-cv-1788-JAD-PAL, pending in the United States District Court, District of Nevada (the "Court"). I understand the terms of the Order, agree to be bound by those terms, and consent to the jurisdiction of the Court with respect to enforcement of the Order.

Signature

Printed Name

Dated